

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MARK T. GREGER,

Plaintiff,

Case No. 11-C-1150

v.

KOHLER COMPANY,

Defendant.

CONSENT DECREE

INTRODUCTION

This matter is before the Court for entry of this decree by consent of the parties to effectuate a compromise and settlement of all claims. After review and consideration, the Court believes that entry of this decree is in the interest of justice.

1. Plaintiff, Mark T. Greger ("Greger"), commenced the above entitled action in the United States District Court for the Eastern District of Wisconsin, alleging that Defendant ("Kohler") violated the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) by failing to reemploy Greger in the proper position upon his return from military service or training.

2. Kohler denies that it has violated USERRA and reasserts its longstanding commitment to employing veterans and reemploying veterans following military service and training. Nevertheless, Greger and Kohler (collectively referred to as the "Parties"), as a result of settlement discussions, have resolved their differences and have agreed that this action should be settled by entry of this Consent Decree, instead of protracted litigation. It is the intent of the parties that this Consent Decree be a final and binding settlement in full disposition of all claims

alleged in the Complaint filed in this case. By Greger's signature to this Decree, Greger accepts the terms of this Decree.

STIPULATED FACTS

3. Pursuant to USERRA, the parties acknowledge the jurisdiction of the United States District Court for the Eastern District of Wisconsin over the subject matter of this action and of the parties to this case for the purpose of entering this Decree and, if necessary, enforcing this Decree.

4. Venue is proper in this district for purposes of this Decree and any proceedings related to this Decree only. The parties agree that all statutory conditions precedent to the institution of this lawsuit have been fulfilled.

FINDINGS

5. Having examined the terms and provisions of the Consent Decree, the Court finds the following:

- a. The Court has jurisdiction over the subject matter of the action and the parties to this action.
- b. The terms and provisions of this Consent Decree are fair, reasonable, and just. The rights of the parties are protected adequately by this Decree.
- c. This Consent Decree conforms with the Federal Rules of Civil Procedure and USERRA, and is not in derogation of the rights and privileges of any person. The entry of this Consent Decree will further the objectives of USERRA and other applicable laws and will be in the best interest of the parties.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED
AS FOLLOWS:**

NON-ADMISSION

6. This Decree is being entered with the consent of the parties and shall not constitute an adjudication or finding on the merits of the case or be construed as an admission by Kohler of any violations of USERRA, or any other law, rule or regulation, dealing with or in connection with equal employment opportunities.

NON-RETALIATION

7. Kohler shall not take any action against any person which constitutes retaliation or interference with the exercise of such person's rights under USERRA, or because such person gave testimony or assistance or participated in any manner in any investigation or proceeding in connection with this case.

REMEDIAL AND INJUNCTIVE REQUIREMENTS

8. For and in consideration of the settlement of all claims in this action, Kohler has agreed to provide the following remedial relief to Greger.

9. Kohler shall, within ten (10) days from the date of entry of this Decree, pay Greger the gross sum of \$13,193.15, by overnight delivery service to the following address:

Mark T. Greger
1945 N. 8th Street
Sheboygan, WI 53081

Kohler shall send a copy of the payment and pay stub reflecting any withholdings or deductions to Assistant United States Lennie Lehman, counsel for Mr. Greger, by electronic mail or first class mail at the same time it sends the payment to Mr. Greger.

(a) The check in the amount of \$13,193.15 is attributable to back pay and prejudgement interest, from which Kohler shall make appropriate deductions for mandatory income tax withholding and other deductions or contributions required by law. Kohler is separately and additionally responsible for paying any applicable federal, state, and local employer-side taxes due on the monies paid to Greger, including paying the appropriate employer's contribution to the Social Security fund, *ie.*, the employer's contribution shall not be deducted from the back pay amount paid to Greger. Greger is separately and additionally responsible for paying any income taxes he may owe on this amount.

(b) Kohler shall provide appropriate tax-related documents necessary for Greger to calculate deductions and timely file tax returns.

10. Kohler agrees to instate Greger into a third-shift Powerhouse Utility Repairman at its location in Kohler, Wisconsin, on January 2, 2012, and to assign him a retroactive seniority date of December 1, 2010 for that position and shift. In connection with this instatement, Kohler agrees to change any personnel documents or electronic data entries to refer to December 1, 2010 as Greger's start date in the third-shift Powerhouse Utility Repairman position; that date shall be the operative date for calculating any seniority-based rights and benefits of employment (including but not limited to competitive shift and position bidding opportunities, bumping rights, promotional eligibility and layoffs), compensation rates or opportunities, and any other benefits or privileges of employment that flows from the third-shift Powerhouse Utility Repairman position. Any documents or electronic data entries that Kohler maintains, and that

refers to an earlier seniority date in that position for Kohler, will be corrected or removed from any personnel files or records maintained or retained at any of Kohler's local, regional, or national offices. Within ten (10) days of making such changes or removals, Kohler shall provide a letter to Greger's counsel, directed to the following address, confirming that these changes have occurred, and listing any changed documents or entries and the locations in which they were changed or removed:

Lennie A. Lehman
Assistant United States Attorney
517 East Wisconsin Avenue, Rm 530
Milwaukee, WI 53202

11. Within either seven (7) days of entry of this Decree or by January 10, 2012, whichever is later, Kohler shall provide the factual written information that has been agreed to by the parties (attached as Exhibit A) to the existing employees in the Powerhouse Utility Repair Department and appropriate union representatives, explaining that Greger was entitled to the position of third-shift Powerhouse Utility Repairman as of December 1, 2010, and through no fault of his own, was overlooked for this position at that time.

NOTICE OF RIGHTS AND DUTIES UNDER USERRA

12. No later than ninety (90) days from the date this Decree is entered, Kohler shall provide one hour of mandatory training regarding the rights, benefits, and obligations of persons and employers covered under USERRA to the Human Resources and Service Center (aka Kohler Konnect) staff responsible for administering military leave; all Powerhouse foremen and supervisors; and the safety and benefits union representative for employees; located and employed at the Kohler, Wisconsin location. All proposed training presentations or materials

shall be provided to Greger's attorney for review and approval at least twenty (20) business days before such mandatory training is scheduled. Within fourteen (14) business days of such training, Kohler shall provide Greger's attorney a written confirmation that the training was conducted in compliance with this paragraph along with a list of attendees, by name and position.

13. For and in consideration of the acceptance of the relief offered to me by Kohler, pursuant to the provisions of the Consent Decree ("Decree") entered by the United States District Court for the Eastern District of Wisconsin in *Mark T. Greger v. Kohler Company*, I, Mark T. Greger, forever release and discharge Kohler and all current, former and future agents, employees, officials, designees, predecessors and successors in interest of Kohler's from all legal, statutory and equitable claims, which have been or could have been asserted in the Complaint filed in the above-captioned civil action concerning my claim against Kohler regarding the Uniformed Services Employment and Reemployment Rights Act.

DISPUTE RESOLUTION AND COMPLIANCE

14. This Court shall retain jurisdiction over this matter and will have all available equitable powers, including injunctive relief, to enforce this Decree. Upon motion of either party, the Court may schedule a hearing for the purpose of reviewing compliance with this Decree. The parties shall engage in good faith efforts to resolve any dispute concerning compliance prior to seeking a resolution of such dispute by the Court. In the event of a dispute, the parties shall give notice to each other ten (10) business days before moving for review by the Court. The parties may conduct expedited discovery under the Federal Rules of Civil Procedure for the purpose of determining compliance with this Decree or defending against a claim of noncompliance.

MISCELLANEOUS

15. All parties shall bear their own costs and expenses of litigation, including attorneys' fees.

16. This Consent Decree constitutes the entry of final judgment within the meaning of Rule 54 of the Federal Rules of Civil Procedure on all claims asserted in this action.

17. The terms of this Consent Decree shall be binding upon the present and future directors, employees, agents, administrators, successors, representatives, and assigns of Kohler and upon the heirs, successors, and assigns of Greger.

18. This Consent Decree constitutes the entire agreement and commitments of the parties. Any modifications to this Decree must be mutually agreed upon and memorialized in a writing by all parties.

EFFECTIVE DATE

19. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

20. This Decree shall expire, and this action shall be dismissed, without further order of this Court either one year from the date that documentation of the monetary payment due to Greger has been submitted to the United States, or the date by which Kohler is required to

provide pertinent tax documents to Greger, whichever is later. Greger may move, for good cause, to extend the decree if the remedial relief called for herein has not been effectuated.

Respectfully submitted on this 20th day of December, 2011.

DELORA KENNEBREW
Chief, Employment Litigation Section
Civil Rights Division

JAMES L. SANTELLE
United States Attorney

By: /s Lennie A. Lehman

/s/ Jodi B. Danis
JODI B. DANIS
(DC Bar No. 453493)
Special Counsel
United States Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, NW
Patrick Henry Building, Room 4031
Washington, D.C. 20530
Telephone: (202) 305-4422
Facsimile: (202) 514-1005
Email: jodi.danis@usdoj.gov
Attorneys On Behalf of Plaintiff
Mark T. Greger

LENNIE A. LEHMAN
WI Bar No. 1014711
Assistant United States Attorney
United States Attorney's Office
Eastern District of Wisconsin
517 East Wisconsin Ave, Rm 530
Milwaukee, WI 53202
Telephone: (414) 297-4503
Facsimile: (414) 297-4394
Email: lennie.lehman@usdoj.gov

/s/ Mark T. Greger
Mark T. Greger
Plaintiff

/s/ PAUL H. TEN PAS
Vice President for Labor Relations
Kohler Company
444 Highland Drive
Kohler, Wisconsin 53044
WI Bar No.
Attorney for Defendant Kohler

Approved and Dated this 21st day of December, 2011.

BY THE COURT:

A handwritten signature in black ink, reading "Rudolph T. Randa", written over a horizontal line.

HON. RUDOLPH T. RANDA
U.S. District Judge